IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

Bail Appl..No. 7838 of 2007()

[CRIME NO.250/2007 OF AADUR POLICE STATION, KASARGOD]

: PETITIONERS

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1. MEHNAS SHEIK, AGED 20 YEARS,
   S/O SHEIK ALI, AJILANKA HOUSE,
   PERLA POST, KASARAGOD.

2. MOHAMMED SINAN M.A., AGED 19 YEARS,
   S/O K.M.ABDUL RAHIMAN, K.K.HOUSE,
   THALANGARA P.O., KASARAGOD.

3. NASEET OMER, AGED 19 YEARS,
   S/O ABDUL RAHMAN, THAISON BEKAL,
   PALLIKARA P.O., KASARAGOD.

4. AFEET ABDUL KHADER, AGED 19 YEARS,
   S/O M. MOHAMMED, P.O.PERUMBLA,
   KALANDU, KASARAGOD.

5. MEHROOB M.K., AGED 20 YEARS,
   S/O MOHAMMED KUNHI, MOONA MANZIL, P.O.CHEMANAD,
   KASARAGOD.

6. AHAMED MIQDHAD, AGED 20 YEARS,
   S/O MOHAMMED KUNHI, PADAR HOUSE, NELLIKUNNU,
   KASARAGOD.

7. ALTHAB.M., AGED 20 YEARS,
   S/O P.M.MOIDEEN KUNHI, ALTAB NEAR TOWN HALL,
   PALIKUNNU, KASARAGOD.

8. MOHAMMED ASLAM, AGED 20 YEARS,
   S/O SHAIK ABDUL RAHMAN, HAYATH MANZIL,
   POVILLA P.O.MALIYAR, KASARAGOD.

9. KAPIL MOHAMMED SHIYAZ, AGED 20 YEARS,
   S/O KAPIL MOHAMMED, PASHA, GREEN VILLA,
   P.O.BEKAL, KASARAGOD.

10. AHAMED FAYAZA, AGED 20 YEARS,
S/O B.N.IBRAHIM, MEETHAL MOULLA,
BEKAL, KASARAGOD.

11. MOHAMMED MEHSHOOQUL, AGED 20 YEARS,
S/O P.M.ABDUL RAHMAN, KADIR,
KADAVATH, P.O.MOGRAL PUTHURE, KASARAGOD.

12. S. MOHAMMED SUHAIL, AGED 20 YEARS,
S/O ABDUL SALAM, 136/13, KSHB, P.O.MUTTATHODI,
KASARAGOD.

BY ADV. SRI.P.SANJAY
SRI.M.MUHAMMED SHAFI

RESPONDENTS:

STATE OF KERALA, REP. BY THE
STATION HOUSE OFFICER, ADUR POLICE STATION,
KASARGODE.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.7838 of 2007

Dated this the 19th day of December 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 to 12. They face allegations in a crime which was registered initially under Section 324 I.P.C. Subsequently, in the course of investigation it was revealed that the victim had suffered a fracture now, the allegation under Section 326 I.P.C is also included. All the petitioners are named in the F.I.R. The petitioners belong to one student group whereas their adversaries belong to another student group. There was an incident which took place on 30/11/2007. About that F.I.R and counter F.I.R have been registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. On account of political animosity, vexatious allegations are being raised against the petitioners who have not even available in the campus at the relevant time. The petitioners are having examinations up to 4th January 2008. If they were arrested, it would upset their academic schedule. In any view of the matter, the petitioners may be granted anticipatory bail, it is prayed.

3. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that violence in the campus deserves to be frowned upon. There are no circumstances whatsoever to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioners may be directed to surrender before the learned Magistrate and seek regular bail. The learned Public Prosecutor further submits that the State has no objection in appropriate directions being issued to permit the petitioners to write their examinations without the threat and risk of being arrested before they complete the examination. I reckon that as a very reasonable stand taken by the learned Public Prosecutor. I find absolutely no features in this case which can justify or warrant the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioners, I am satisfied, must surrender before the learned Magistrate and seek regular bail.

4. This petition is in these circumstances allowed in part. Following directions are issued under Section 438 Cr.P.C in favour of the petitioners.

i) Petitioners shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 07/01/2008. They

can apply for bail after giving prior notice to the Prosecutor in charge of the case. The learned Magistrate must consider their application for bail on merits in accordance with law and expeditiously - on the date of surrender itself unless there are compelling reasons.

ii) The petitioners shall thereafter abide by the orders to be passed by the learned Magistrate on their application for bail.

(iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law, as if these directions were not issued at all.

(iv) If they were arrested prior to 07/01/2008, they shall be released from custody on their executing a bond for Rs.25,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 07/01/2008.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007